



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS
LOCAL 464

Complainant

v.

NASHUA POLICE COMMISSION

Respondent

CASE NO. P-0740:1

DECISION NO. 85-41

APPEARANCES

Representing the International Brotherhood of Police Officers, Local 464

Cynthia Denton, Esq., Counsel

Representing the Nashua Police Commission

Steven A. Bolton, Esq., Counsel

Also in Attendance

Paul A. Martel, City of Nashua
Ray Cabana, Captain, Nashua Police
Walter Bausha, Nashua Police
William Quigley, Chief, Nashua Police
Paul L. Goupil, Nashua Police
Margaret Q. Flynn, Nashua Police Commission
Alan G. Jeffery, Nashua Police Commission

Thomas A. Maffee, Nashua Police Comm.
Frederick Williams, Nashua Police Dept.
Dan Stevens, Nashua Police Dept.
Barney Megargee, Nashua Police Dept.
Doug Sparks, Nashua Police Dept.
Robert Goff, Nashua Police Dept.
Scott Childs, Nashua Police Dept.

BACKGROUND

On February 26, 1985 with an amendment filed on April 1, 1985, the International Brotherhood of Police Officers Local 464 (hereafter referred to as Union) complained to the Public Employee Labor Relations Board (hereafter referred to as the Board) that the Nashua Police Commission (hereafter referred to as the Commission) terminated the employment of Officer Scott Childs in retaliation for his participation in a union organizing drive and other union activities; that Officer Childs was denied representation at a meeting with the Chief of Police which was expected to result in disciplinary action; that Officer Douglas Sparks, Union President, was prevented from returning certain phone calls on duty which to his supervisors appeared to be union related; and

that the Commission refused to recognize payroll deduction authorization cards for certain union members.

The Commission responded denying that any actions taken against Officer Childs were in retaliation for protected activity; asserted that the denial of representation at a disciplinary meeting was not in violation of the collective bargaining agreement or RSA 273-A; asserted the restriction to Officer Spark's telephone activity was in compliance with the collective bargaining agreement and any dispute concerning that matter should be resolved through the grievance procedure, therefore that complaint should be dismissed by this Board; and asserted that payroll deductions for union dues has been and continues to be conducted in compliance with the collective bargaining agreement, therefore any dispute over the application of payroll deductions is a matter for the grievance procedure and that complaint should be dismissed by this Board.

On May 2, 1985 a hearing was held at the Public Employee Labor Relations Board's office in Concord, New Hampshire with all parties present. At the hearing the Union amended its complaint by striking, in paragraph 3 of their amended complaint, the words "and" in line 4 through "Department" in line 6.

FINDINGS OF FACT

At hearing, the Union asserted that the case before the PELRB, in addition to the unfair labor practice charges cited, was an elevation of the grievance of Scott Childs that "just cause" did not exist for the Commission to terminate his employment as provided by their collective bargaining agreement.

The Commission argued that "just cause" is not a grievable subject because Chapter 208 of the N.H. Laws of 1891 as amended (City Exhibit 84), reserved to the Commission the "...authority to remove any officer at any time for just cause and after due hearing, which cause shall be specified in the order of removal," and objected to the Board proceeding with the grievance process on "just cause".

The Board took the Commission's objection under advisement and instructed the parties to proceed with their cases on the unfair labor practice charges.

After lengthy testimony and the submission of numerous exhibits, this Board finds the following facts:

- 1) Officer Scott Childs was actively engaged in union related activities protected under RSA 273-A, from the Spring of 1984 until his termination.
- 2) Officer Childs, along with Officer Sparks, informed Chief Quigley of their union related activities during the Spring or Summer of 1984.
- 3) Chief Quigley took the union organizing drive as a personal affront.
- 4) Officer Childs' immediate supervisor, Sergeant Goff, advised Officer Childs to mind his "p's and q's" because the Nashua Police Department would hold him to a different standard than other officers due to his involvement in union activities.

- 5) On January 16, 1985, Officer Childs was summoned to meet with Chief Quigley for the purpose of discussing allegations against Officer Childs which could result in disciplinary action. Officer Childs request to be accompanied by a representative of his choice was denied.
- 6) At the January 16, 1985 meeting with Chief Quigley, Officer Childs was informed of allegations against him arising from two incidents and advised he could submit his resignation and receive a favorable recommendation from the Nashua Police Department to future potential employers or face termination of employment proceedings before the Nashua Police Commission.
- 7) On January 17, 1985 Officer Childs received a notice of termination letter (City Exhibit 6) citing three incidents which gave rise to approximately 9 charges of violations of Nashua Police Department rules and regulations and one misdemeanor charge for violating RSA 264:25 "conduct after an accident".
- 8) Officer Childs' immediate supervisor, Sergeant Goff, has previously made arrests under the cited statute (RSA 264:25).
- 9) No testimony was entered to indicate Officer Childs was either arrested or summonsed as a result of the Nashua Police Department's and Nashua Police Commission's belief that Officer Childs had violated the laws of the State of New Hampshire (RSA 264:25).
- 10) At the Nashua Police Commission's hearing re: Scott Childs, in an unsolicited statement, Commissioner Jeffery stated "I frankly...¹ every time I hear the talk of union it chills me up and down..."
- 11) Two of the incidents giving rise to most of the charges against Officer Childs were for his involvement in two motor vehicle accidents which resulted in approximately \$505.20 damage. The third charge, failure to file a report on a suspected missing juvenile results in a dispute over whether or not discretionary judgment was exercised properly.²
- 12) Previous department disciplinary actions for automobile accidents, where there is repeat offense, negligence and/or damage in excess of thousands of dollars has not exceeded a one day suspension.
- 13) The Nashua Police Department and the Nashua Police Commissioners have accepted the resignation of former employees in lieu of disciplinary action before the Nashua Police Commission for separate incidents alleging:

- sexual advance on duty

¹City Exhibit 87, page 141, lines 6 and 7

²This Board did not hear the merits of those three incidents. This Board will first decide whether or not the allegations and/or disciplinary action were motivated by anti-union sentiment. If the motivation is found to be not in violation of RSA 273-A, the Board may order the grievances, "Did just cause exist; and was the disciplinary action imposed consistent with past department discipline for similar events?", to arbitration.

- sexual harassment via telephone
- drug involvement
- theft of evidence
- peeping tom activities

The Nashua Police Department has never before proposed voluntary resignation in lieu of termination proceedings before the Nashua Police Commission as a matter of progressionary discipline: ie. verbal warning, written reprimand, suspension of short duration, suspension of longer duration, then termination for disciplinary reasons has occurred after a significant incident which appeared to be a serious crime.

- 14) In accordance with RSA 273-A:4, the collective bargaining agreement between the Commission and the Union's predecessor, the Nashua Police Association, which is administered by the Union contains a grievance procedure.³
- 15) There was no testimony to indicate the subject matter of Officer Childs' request to have Officer Sparks return a call was limited to a grievance investigation.

RULINGS AND DECISIONS

- 1) In view of the non-processed misdemeanor charge against Officer Childs; his alleged involvement in two motor vehicle incidents which may have given rise to damage amounting to \$505.20; and a difference of opinion over said Officer's exercise of discretion in another matter, the Board finds the penalty was extraordinary and unreasonable. The action was at least in part retaliation for union protected activities for Officer Childs.
- 2) The actions of the Nashua Police Department and the Nashua Police Commission in removing Officer Childs from employment because of his involvement in protected activities is an unfair labor practice in violation of RSA 273-A:5, I (a), (b), (c), (d) and (g).
- 3) Chief Quigley's denial of Officer Childs' request for representation at a meeting expected to result in disciplinary action, is in violation of RSA 273-A:11, I (a), which is an unfair labor practice under RSA 273-A:5, I (g).
- 4) Just cause determinations, except where specifically made optional by other statutes (ie. teacher fair dismissal act, RSA 189:14a for non-tenured teachers), is a grievable issue. The decisions of the Nashua Police Commission in disciplinary matters are subject to the grievance procedure.

³This Board reserves the right to determine whether or not the grievance procedure is "workable" pending any future use of the grievance procedure.

- 5) The collective bargaining agreement between the Union's predecessor and the Nashua Police Commission administered by the Union, contains a provision that grievance investigation shall not be conducted during duty time. This provision suspends the rights conferred to the Union through RSA 273-A:11, I (a) and II for the term of the collective bargaining agreement.
- 6) The Nashua Police Department's prohibition against Officer Sparks' use of non-department phones during break time to return phone calls to Officer Childs constitutes an unfair labor practice by discriminating against Officer Childs for his involvement in protected activities contrary to RSA 273-A:5, I (a), (b), (c), (d), (g) and (h).
- 7) RSA 273-A:1, IX (d) exempts probationary employees from the definition of public employees. Probationary employees even when their position is part of the bargaining unit, are not members of the bargaining unit and therefore not covered by the collective bargaining agreement for that bargaining unit unless specific provisions are agreed to by the parties.
- 8) The determination of eligibility for union membership as relates to probationary employees, is a function solely vested in the Union so long as its policies do not conflict with RSA 273-A. This Board and the courts have jurisdiction for that determination under RSA 273-A:10, VI (b).
- 9) Union membership is clearly distinguishable from bargaining unit membership. If the Union believes that the carryover provisions of their predecessor's collective bargaining agreement included provisions for authorized payroll dues deduction for non-bargaining unit members of the Union, that dispute clearly constitutes a question of contract interpretation which can properly be resolved through the grievance procedure. This Board does not find an unfair labor practice in this charge.

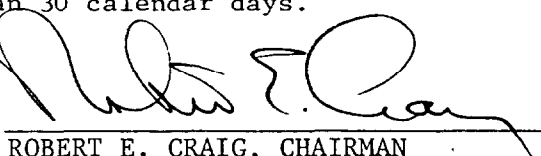
ORDER

The Nashua Police Commission shall cease and desist from retaliatory actions against employees for participation in protected activities.

Officer Scott Childs shall be immediately reinstated to his employment position of January 15, 1985 and made whole with no loss of benefits, rights or wages minus interim earnings.

All reference to these termination proceedings against Officer Childs shall be permanently removed from Officer Childs' employment records.

A copy of these findings, decisions, and order shall be posted in a conspicuous place or places accessible to all employees of the Nashua Police Commission for a period of not less than 30 calendar days.



ROBERT E. CRAIG, CHAIRMAN

Signed this 13th day of June, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Board members Seymour Osman, Russell Verney and Richard Roulx present and voting. Also present, Evelyn C. Lebrun, Executive Director.